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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R. & RH. P., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RANDY P.,

Defendant and Appellant.

B248577

(Los Angeles County
Super. Ct. No. CK96930)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Robert S. Draper, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, John F. Krattli, County Counsel,
James M. Owens, Assistant County Counsel, and John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent.

Randy P. (father) appeals the juvenile court's judgment and orders of March 26, 2013, declaring his four-year-old daughter R..P. and two-year-old son Rh.P. dependents of the court under Welfare and Institutions Code¹ section 300, and ordering that his visitation be monitored. He contends substantial evidence does not support the jurisdictional findings that domestic violence and his drug abuse placed the children at risk of abuse or neglect. Father also contends that the juvenile court erred in restricting him to monitored visitation with the children. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 13, 2012, a mandated reporter contacted the Department of Children and Family Services (Department) and stated that R. was living with paternal grandmother while M.F. (mother) was homeless and using drugs. Two days later, a social worker interviewed mother who said that both R. and Rh. were actually living with her at a friend's apartment. Mother denied using drugs and agreed to submit to a drug test. Mother also said that father was incarcerated and disclosed that there was domestic violence in their relationship. She said that father had grabbed her and slapped her, and that the domestic violence began to escalate shortly before father was incarcerated in July 2012.

The social worker also spoke with paternal grandmother who said that R. had resided with her until recently when mother regained custody of her. Paternal grandmother also said that Rh. had resided with a friend of mother's until recently when he also returned to live with mother. Mother did not show up for the scheduled drug

¹ All future statutory references are to the Welfare and Institutions Code.

test and the social worker lost contact with her after she moved out of her friend's apartment.

On December 10, 2012, the children were taken into police custody after mother's new boyfriend was arrested for an incident of domestic violence against mother. A social worker met with mother who said that the police officers had also found drugs in her bag. Mother denied that the drugs were hers, but said that she uses drugs and that her drug of choice was methamphetamines. The children were not wearing shoes and appeared dirty, unkempt, and hungry. The Department took them into protective custody.

On December 13, 2012, a petition was filed alleging that mother and father have a history of domestic violence in the presence of the children, that mother has a history of substance abuse, and that mother had left the children for days with paternal grandmother without making a plan for their care and supervision. The court detained the children.

On January 23, 2013, an amended petition was filed alleging that father also had a history of substance abuse as well as drug-related criminal convictions. Father's substance abuse problems were alleged to render him incapable of providing "regular care, protection and support" for the children and to endanger the children's physical and emotional health. The petition also newly alleged that the children had been exposed to a violent confrontation between mother and her new boyfriend.

The Department reported to the court that father had an extensive criminal history which included violent and drug-related offenses: in 2004, the police identified

father as belonging to a gang and he was convicted of carrying a loaded firearm ; in 2005, he was arrested for battery and possession of a dagger; in 2006, the police investigated him for an assault related to his gang activity and convicted him of possession of a controlled substance; in 2009, he was arrested for possession of a controlled substance for sale; in 2012, he was arrested for assault with a deadly weapon; and, most recently, on June 2012, he was arrested of possession of a controlled substance for sale and thereafter convicted and sentenced to prison.

On January 30, 2013, father was interviewed by the social worker while he was still incarcerated. He said that he and mother had separated in June 2012. When asked whether he had struck mother in the face, father said “I slapped her. She gets mad. She’s very stubborn.” Although he said that this did not happen in front of the children, he also said that mother had hit him on occasion and that this “might have” taken place in front of the children.

The social worker also asked father regarding the petition’s allegations that another man had struck mother. Father said that his family had not told him about those allegations because they knew he would get mad and “something would happen.” Father further said that his “mind goes blank after that [–] if it has to do with the kids I get mad.”

When asked about his drug use, father said that he was serving time for possession of methamphetamines, and acknowledged having used and sold this drug. Father had not received any treatment for his drug use, but stated that he was willing to

go to treatment once he finished his prison term. Father was released from incarceration on February 2, 2013.

At the jurisdiction/ disposition hearing on March 26, 2013, the juvenile court sustained the petition's allegations as to father under section 300, subdivision (b),² finding that the parents' history of engaging in violent altercations and father's substance abuse problems placed the children at risk of physical and emotional harm.³ Mother and father were granted family reunification services and were ordered to participate in counseling for drug use and in a domestic violence program. Father timely appealed.

CONTENTIONS

Father contends there was no substantial evidence supporting the jurisdictional findings that domestic violence between him and mother and his drug abuse placed the children at risk of abuse or neglect. Father further contends that the juvenile court abused its discretion in restricting father's visits to monitored.⁴

² Section 300, subdivision (b) provides a basis for juvenile court jurisdiction when the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child.

³ The court also sustained the petition's allegations that mother's substance abuse and her violent altercation with another man placed the children at risk of harm.

⁴ The court also sustained findings against mother which constitute an alternate basis for jurisdiction under section 300. Although we may affirm a juvenile court's finding of jurisdiction over the children based on those alternate jurisdictional findings, we may also exercise our discretion to reach the merits of a challenge to jurisdictional finding when the finding may be prejudicial to the appellant. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) Here, the jurisdictional findings as to father could have

DISCUSSION

1. Standard of Review

“We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. [Citations.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “In so doing, we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order. [Citation.] ‘Substantial evidence’ means evidence that is reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case. [Citation.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.)

With respect to a visitation order, the juvenile court has “broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court’s determination in this regard will not be reversed absent a clear abuse of discretion. [Citation.]” (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

2. Substantial Evidence Supported the Juvenile Court’s Finding That Domestic Violence Between the Parents Was Likely to Continue

Father contends that the juvenile court’s finding that the parents’ domestic violence endangered the children was erroneous because there was no evidence that there was a current risk of domestic violence at the time of the jurisdiction/disposition hearing: the last incident of domestic violence took place almost a year prior to the hearing and the parents had been separated since that time. “Physical violence between

negative consequences to him in future family law or dependency proceedings. (See *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.)

a child's parents may support the exercise of jurisdiction under subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. [Citations.]” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717)

Here, there was evidence that the domestic violence between the parents began to escalate shortly before father was incarcerated in July 2012, and that mother and father only separated around the time when he was incarcerated. Father was then released from prison the month prior to the jurisdiction/ disposition hearing. Based on this evidence, the juvenile court reasonably could conclude that the parents would resume contact now that father was released from prison and that the domestic violence was likely to continue.

Furthermore, father's statements indicated that he had not made any progress in resolving the behavior that had previously led to domestic violence. He explained without apology that he had slapped mother because she “got mad” and was “stubborn.” He further suggested that he would be prone to resorting to violence in response to information that another man had assaulted mother. There was also no evidence that father received any treatment for his violent behavior.

Father analogizes his situation to that of the parent in *In re Daisy H.* (2011) 192 Cal.App.4th 713 where the court of appeal found that there was insufficient evidence of a current risk of domestic violence between the parents. However, in *In re Daisy H.*, the last incident of domestic violence occurred “at least two, and probably seven, years before the [Department] filed the petition.” (*Id.*, at p. 717.) Here,

unlike in *In re Daisy H.*, the domestic violence referred to in the petition occurred less than a year before the petition was filed. In addition, as stated above, the evidence indicated that the domestic violence had only ceased due to father's incarceration, and that father had only recently been released. Furthermore, father had a lengthy history of dangerous criminal behavior, he had made statements suggesting that he would continue to respond with violence when provoked, and indicated he was not remorseful for the past domestic violence with mother. This constituted substantial evidence supporting the juvenile court's finding that the domestic violence between the parents was likely to continue.

3. *Substantial Evidence Supported the Court's Finding That Father's Substance Abuse and Related Criminal History Presented A Substantial Risk of Serious Physical Harm to the Children*

Father contends that there was no substantial evidence that his substance abuse and related criminal history presented a substantial risk of serious physical harm to the children. A jurisdictional finding under section 300, subdivision (b) requires "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

In evaluating the risk posed to the child, the juvenile court should consider "the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and

supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026.)

“Cases finding a substantial physical danger tend to fall into two factual patterns. One group involves an *identified, specific hazard* in the child’s environment — typically an adult with a proven record of abusiveness . . . [the] second group involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824.) Here, R. and Rh. were both “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety,” and the record showed that father’s substance abuse and related criminal activity impacted his ability to provide such supervision and care to the children.

Father admitted to using and selling methamphetamines, and his extensive criminal history involved multiple convictions for possession of controlled substances. Father’s sale of drugs, gang activity, and violent actions appeared intertwined and placed the children at risk of exposure to violence. In addition, his criminal history led to multiple prison sentences, including his recent incarceration, during which he was unavailable to supervise or care for his children. There was also no evidence he had taken any steps to address his past conduct through participation in educational programs or treatment. Furthermore, father did not demonstrate any “current understanding of and attitude toward the past conduct that endangered a child . . . that would help [him] avoid a recurrence of such an incident.” (*In re J.N., supra*,

181 Cal.App.4th at pp. 1025-1026.) This constituted substantial evidence supporting the juvenile court's finding that the children were placed at substantial risk of physical harm.⁵

4. *The Juvenile Court Did Not Abuse Its Discretion in Ordering Monitored Visitation for Father*

Father generally argues that there was “no rational basis to limit [his] visitation to supervised status.” Section 362.1, subdivision (a)(1) requires that the court order frequent visitation between the child and his parents, consistent with the child's well-being. The statute also specifies that “[n]o visitation order shall jeopardize the safety of the child.” (Section 362.1, subd. (a)(1)(B).) Here, there was ample evidence that father was entrenched in a criminal and violent lifestyle related to drugs, and that he had not taken any steps to address his substance abuse problems. Accordingly, unmonitored visitation would jeopardize the safety of the children, and it was not an abuse of discretion for the court to order that father's visits be monitored.

⁵ Father argues that because there was no substantial evidence supporting the juvenile court's jurisdictional findings against him, that (1) the order requiring father to undergo treatment for domestic violence must be vacated, and (2) he was a non-offending parent entitled to custody under section 361.2. Since we find that there was substantial evidence supporting the jurisdictional findings at issue, we do not reach these arguments.

DISPOSITION

The judgment and disposition order are affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.